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Attorney for Creditor, Delivery Associates, Inc.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA, SANTA ROSA DIVISION

In re
RMS PROPERTIES, LLC,
Debtor.

RMS PROPERTIES, LLC,
Plaintiff,
v.
DELIVERY ASSOCIATES, INC. a California
corporation,
Defendant.

} Case No. 11-10231
} Chapter 11
} Adv. Case No. 12-01134
}
ANSWER TO COMPLAINT TO
DETERMINE THE NATURE, EXTENT
AND VALIDITY OF LIEN OF DELIVERY
ASSOCIATES, INC. AND FOR
DECLARATORY RELIEF
}
Status Conference:
Date: October 1, 2012
Time: 2:00 p.m.
Location: U.S. Bankruptcy Court
99 South "E" Street
Santa Rosa, CA 95404

Defendant, Delivery Associates, Inc., Answers the Complaint for to Determine the

Nature, Extent and Validity of Lien of Delivery Associates, Inc. and for Declaratory Relief as follows:

11

PREAMBLE

The paragraphs of the Answer correspond to those of the Complaint. For efficiency, the following phrases are abbreviated and incorporated into each paragraph of the Answer where indicated:

Denied: "Each and every allegation of the corresponding paragraph of the Complaint is denied, generally and specifically."

Denied re Information and Belief: “This answering Defendant lacks information or belief sufficient to enable Defendant to admit or deny the allegations of the corresponding paragraph of the Complaint, which is denied generally and specifically.”

Responses Realleged: "This answering Defendant realleges the responses to the paragraphs of the Complaint which are realleged or incorporated."

Where damages or an amount due or owing is alleged: "This answering Defendant denies that Plaintiff has been damaged, or that there is any sum due or owing, in the amount alleged, or in any other amount."

GENERAL ALLEGATIONS

1. Admit.
 2. Admit.
 3. Admit.
 4. Admit.
 5. Admit.
 6. Admit.
 7. Deny.
 8. Deny. Lack of information or belief as to what Plaintiff believes.
 9. Admit.
 10. Deny.
 11. Reallege.

1 12. Deny. Except that Defendant admits that it claims a secured possessory interest n
2 certain personal property alleged to be owned by Plaintiff.

3 13. Deny.

4 14. Included by reference.

5 15. Deny.

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

8 These answering defendants allege that plaintiff's complaint fails to allege facts sufficient
9 to state a cause of action against these answering defendants.

10 **SECOND AFFIRMATIVE DEFENSE**

11 Plaintiffs, by their conduct and participation, approved, authorized and ratified the actions
12 and transactions complained of and upon which recovery is sought. Plaintiffs are, therefore,
13 stopped and barred from recovery herein.

14 **THIRD AFFIRMATIVE DEFENSE**

15 Plaintiffs have failed to reasonably mitigate their damages, if any. Therefore, all or some
16 portion of plaintiffs' alleged damages were caused by or attributable to the failure of plaintiffs to
17 mitigate their alleged damages. Plaintiffs' recovery, if any, must be diminished to the extent that
18 it reasonably could have mitigated their damages.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 Any injury or damages to plaintiffs were proximately caused by the negligence of
21 plaintiffs, in that plaintiffs failed to exercise ordinary or reasonable care under the circumstances
22 and acted with willful and wanton disregard for their own interests.

1
FIFTH AFFIRMATIVE DEFENSE

2 At the time of the event referred to herein, plaintiffs consented to the conduct of
3 defendants by reason of plaintiffs' voluntary participation therein.

4
SIXTH AFFIRMATIVE DEFENSE

5 The injuries and damages alleged by plaintiffs, if any, were proximately caused by the
6 negligence and liability of other parties and defendants request that an allocation of such
7 negligence and liability be made among such other parties, and that if any liability is found on
8 the part of defendants, that judgment against defendants be found only in the amount which is
9 proportionate to the extent and percentage by which defendants' acts or omissions contributed to
10 plaintiffs' injuries or damages.
11

12
SEVENTH AFFIRMATIVE DEFENSE

13 At all times mentioned herein, the plaintiffs were in pari delicto.

14
EIGHTH AFFIRMATIVE DEFENSE

15 At all times mentioned herein, plaintiffs, expressly ordered, approved, authorized,
16 participated in, and ratified the acts and transactions complained of upon which recovery is
17 sought and, therefore, plaintiffs are barred from recovery herein.
18

19
NINTH AFFIRMATIVE DEFENSE

20 At all times mentioned herein, plaintiffs, by their conduct and participate,
21 approved, authorized and ratified the actions and transactions complained of and upon which
22 recovery is sought and plaintiffs are, therefore, estopped and barred from recovery herein.
23

24
TENTH AFFIRMATIVE DEFENSE

25 Plaintiffs' action was not brought in good faith and is frivolous, and by reason of the
26 premises, defendants are entitled to and will seek reasonable expenses, including attorney fees in
27

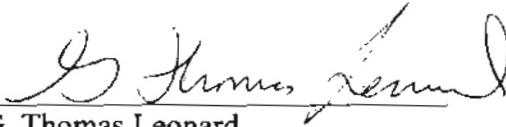
1 defending the action pursuant to Federal Rules of Civil Procedure.

2 WHEREFORE, defendant prays that:

- 3 1. Plaintiffs take nothing by way of their complaint;
- 4 2. For reasonable attorneys fees incurred herein; and
- 5 3. For such other relief as the court deems just and proper.

7 Dated: *August 16, 2012*

8 Respectfully submitted,

9
10 
11 G. Thomas Leonard
12 Attorney for Defendant,
13 Delivery Associates, Inc.

In re:
RMS Properties, LLC

CHAPTER 11
CASE NUMBER 11-10231

Debtor(s). ADV. NUMBER: 12-01134

NOTE: When using this form to indicate service of a proposed order, DO NOT list any person or entity in Category 1.
Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1370 N. Brea Boulevard, Suite 205, Fullerton, CA 92835

The foregoing document described **ANSWER TO COMPLAINT TO DETERMINE THE NATURE, EXTENT AND VALIDITY OF LIEN OF DELIVERY ASSOCIATES, INC. AND FOR DECLARATORY RELIEF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On 8/16/12 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Mikel Bryan mikel@mdbryanlaw.com
G. Thomas Leonard gthomasleonard@gmail.com
U.S. Trustee/SR USTPRegion17.SF.ECF@usdoj.gov, ltroxas@hotmail.com

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):
On 8/16/12 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed. **Via U. S. Mail:**

Hon. Alan Jaroslovsky, U.S. Bankruptcy Court, Northern District, 99 South "E" Street, Santa Rosa, CA 95404
Russell Harvey, Delivery Associates, Inc., 13151 Sherman Way #K, North Hollywood, CA 91605
Mikel D. Bryan, Law Offices of Mikel D. Bryan, 550 Doyle Park Drive, Santa Rosa, CA 95405

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 8/16/12 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

8/16/12
Date

Jackie Winkler
Type Name

/s/ Jackie Winkler
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

August 2010

F 9013-3.1.PROOF OF SERVICE